

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CIT BANK, N.A.,

Plaintiff,

-against-

WILLIAM COVINO, BOARD OF DIRECTORS
OF EAGLE WOOD VISTAS HOMEOWNERS
ASSOCIATION, INC.,

Defendants.

No. 17 CIV 09579 (NSR)

ORDER

NELSON S. ROMÁN, United States District Judge

Plaintiff CIT Bank, N.A. (“Plaintiff”), moves, pursuant to Federal Rules of Civil Procedure (“FRCP”) §§ 4(m) and 4(e)(1), and NY CPL § 315, for an extension of time to serve Defendant Board of Directors of Eagle Wood Vistas Home Owners Association, Inc. (the “Association”), and for a court order permitting service by publication. For the following reasons the motion is GRANTED.

Plaintiff commenced this action on or about December 6, 2017 seeking to foreclose on a mortgage on a property located in the Town of Warwick in Orange County, New York. Plaintiff attempted to serve the Association but was unsuccessful. Plaintiff seeks additional time to serve and permission to serve by an alternative method. FRCP § 4(m) provides, in relevant part, that a plaintiff must serve process upon a defendant within 90 days of the filing of the complaint. If service of process is not timely completed, the court must, upon notice of motion and for good cause, extend the time for service. FRCP § 4(m). New York Bus. Corp. Law § 304, provides that a foreign or domestic corporation conducting business in the state is required to designate the secretary of state as an agent for the purpose of service.

U.S. DISTRICT COURT

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ELECTRONICALLY

DOC #:

DATE FILED: 10/31/2018

In support of its application, Plaintiff submits the affidavit of Rosemary A. LaManna (“LaManna”) wherein she avers that service upon the Association was unsuccessfully attempted on December 29, 2017. Unable to complete service, LaManna searched the internet and the New York Secretary of State Registry for an address or place of business for the Association. Her search revealed that the Association is not registered with the New York Secretary of State as required.

FRCP § 4(e) provides, in relevant part, that service of process may be effectuated in accordance with the laws of the state wherein the action is brought. New York CPLR § 315 permits service by publication in the event service cannot be made with due diligence by another prescribed method. Having demonstrated good cause and that service cannot be effectuated with due diligence by another means, Plaintiff has demonstrated entitlement to the relief requested.

Plaintiff is granted until January 18, 2019 to effectuate service upon the Association. Service may be effectuated by means of publication in the Town or City of Pine Island (Orange County), New York newspaper or, if none is available, with a Countywide publication of Orange County which list legal notices. The legal notice must be listed on two separate dates. Service must be completed on or before January 18, 2019.

The Court respectfully directs the Clerk of the Court to mail a copy of this Order to Defendant Covino at the address listed on ECF, show proof of service on the docket, and terminate the motion at ECF No. 27.

Dated: October 31, 2018
White Plains, New York

SO ORDERED:


NELSON S. ROMÁN
United States District Judge